



Jammu and Kashmir State Information Commission

جموں اینڈ کشمیر سٹیٹ انفارمیشن کمیشن

(Constituted under The Right to Information Act, 2009)

Wazarat Road Near D.C. Office, Jammu, Fax No. 0191-2520947, 2520927

Old Assembly Complex, Srinagar. Fax No. 0194-2484268, 2484269

www.jksic.nic.in

File No: SIC/CO/Comp/74/2012

Decision No. SIC/CO/Comp/74/2012/368

Title: Mohd Ahsan Untoo, Chairman International Forum for Justice / Human Rights Forum J&K

V/s

Public Information Officer O/o Inspector General of Police, CID, J&K Jammu.

**Jammu
19-12-2012**

This is a complaint filed before this Commission by Sh. Mohd. Ahsan Untoo on 08-10-2012. Registry of this Commission fixed the hearing of this complainant and accordingly the Public Information Officers, J&K Home Department and Inspector General of Police (CID) were issued notices. The PIO office of Inspector General of Police (CID) Sh. Bashir Ahmed Tamil, IPS (SSP) attended this Commission. The Complainant vide this Commission notice dated 04-12-2012 was also informed to be present in person or through any authorized

representative. However, he did not attend, he was even contacted on his Phone No.946966872.

The Complainant vide his complaint dated 04-10-2012 has complained before the Commission that he had filed an RTI application before the PIO of State Home Secretary, J&K Civil Secretariat, Srinagar and deposited the statutory fees on 23-08-2011 for seeking information on the following points:-

- a) *The number of under trails facing charges regarding the militancy related activities in the State of Jammu & Kashmir alongwith full particulars viz name, partentage, residence, offences under which they are facing trail alongwith place of detention.*
- b) *The number of persons detained under public safety act along with full particulars viz name, parentage, residence and the place of lodgment.*
- c) *The number of persons convicted in the militancy related cases and the offences under which they have been convicted.*

The Number of persons who have been awarded Capital Punishment and the persons are being convicted for life and the persons who have been convicted in the militancy related cases alongwith their full particulars viz, name, parentage, residence and the place of Detention, alongwith the term they have already completed in the Jail regarding their Punishment.

- d) *The Number of female prisoners detained under public safety act or any substantive Offence alongwith the full particulars viz, name, parentage and place of detention/lodgement.*

The Complaint has submitted before this Commission that DIG Prison, J&K vide order No. 128/5092 dated 21-09-2011 denied the

information invoking section (8)(a) of the State RTI Act, 2009 without assigning any reasons. The Order accordingly being in contravention to the State RTI Act, 2009, the respondents may be directed to furnish information regarding the same. The Public Information Officer, Home Department J&K vide his communication dated 29-11-2012 informed that after receipt of application from the complainant that it was transferred to Director General of Police, J&K who inturn forwarded the application to Inspector General of Police (CID) Sh. Bashir Ahmed Tamil present PIO in (CID) Head Quarter did inform the Commission that the complainant's application under J&K RTI Act, 2009 was responded to by the office of CID vide NO. CID/GB/RTI/2011/34/1425 dated 06-03-2012 who passed an order refusing the information invoking Section 8(a) of the State RTI Act, 2009. The Commission has perused this order. It would be appropriate to reproduce the operative part of the order conveying the refusal of the PIO to disclose the information:-

"the information sought by you is not covered under Section 8(a) of the State RTI Act, 2009, as such the same is withheld".

***Sd/-
For Inspector General of Police,
CID J&K Government***

Thus, it is obvious that order has been passed in a very casual and routine fashion. Under the State RTI Act, 2009 only that PIO

can pass an order who is designated as PIO by the Public Authority under Section (5) of State RTI Act, 2009. Obviously the Inspector General of Police, (CID) in March, 2005 was not PIO, secondly even if he was PIO then being a quasi judicial authority, he has to pass a speaking order. The role of PIO has been explained by the Hon'ble Supreme Court of India, in its judgment in the case of Chief Information Commissioner and Another versus State of Manipur and Another in Civil Appeal Nos. 10787-10788 of 2011 wherein discussing (the jurisdiction of sections 18 and 19 of Central information Act corresponding sections 15 and 16 of the State RTI Act). Hon'ble Apex Court held that "primary obligation of consideration of the request for seeking information is of the public information officer as provided under section (7)". He has to himself pass the order. Not only is he required to pass the order, he has to identify himself also. Similarly, the order of PIO is not complete if the legal requirement laid down in section 7 (8) has not been fulfilled by the PIO. The absence of such intimation and information to the information seeker denies him his right of appeal. Hence, on above grounds the order passed on 06-03-2012 is hereby quashed, as the order under consideration is no order in the eyes of law because the said order is passed by an authority who has no jurisdiction to do the same.

The PIO is, therefore, directed to pass a fresh order on the RTI application under section 7 of the State RTI Act, 2009. The order

under section 7 is an important quasi judicial function because the PIO is to concern himself with the exercise of a fundamental right which the information seeker has been provided under the transparency laws operating at Centre and in States.

The Hon'ble Apex Court of the country in a number of judgments has brought out the significance and importance of the Right to Information even before the formal enactment of transparency law by the Union Parliament and State Legislature. In its celebrated judgment in the case of **State of Uttar Pradesh v. Raj Narain & others-** AIR 1975 SC 865 the Hon'ble Court held:

"....The people of this country have a right to know every public act, everything, that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. **The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can at any rate, have no repercussion on public security**.....To cover with veil of secrecy, the common routine business, is not in the interest of the public. Such secrecy can seldom be legitimately desired."

Similarly Another Constitution Bench in **S.P Gupta & Ors. v. President of India and Ors.** (AIR 1982 SC 149) relying on the ratio in **Raj Narain** (supra) held:

".....The concept of an open government is the direct emanation from the right to know which seems to be implicit in the right of free

speech and expression guaranteed under Article 19 (i) (a) (of the Constitution of India). Therefore, disclosure of information in regard to the functioning of Government must be the rule and secrecy an exception justified only where the strictest requirement of public interest so demands. The approach of the court must be to attenuate the area of secrecy as much as possible consistently with the requirement of public interest, bearing in mind all the time that disclosure also serves an important aspect of public interest....”

In **Secretary, Ministry of Information & Broadcasting, Govt. of India and Ors. V. Cricket Association of Bengal and Ors.**- (1995) 2 SCC 161. Court also “held that right to acquire information and to disseminate it is an intrinsic component of freedom of speech and expression”.

Right to know is a basic right which citizens of free country aspire to have knowledge which broadens horizon of the right to live in this age in our land under Article 21 of our Constitution. Hon’ble Apex Court again held in a different judgment that this right has reached to new dimensions and urgency because it puts greater responsibility upon those who take upon themselves the responsibility to inform **Reliance Petrochemicals Ltd. V. Proprietors of Indian Express Newspapers Bombay Pvt. Ltd... & others**- (1988) 4 SCC 592”

In Another landmark judgment in the case of Chief Information Commissioner and Another versus State of Manipur of Another Hon’ble Supreme Court of India in Civil Appeal No:-10787-10788 of 2011 made the following landmark significant observations:-

“The exercise of judicial discretion in favour of free speech is not only peculiar to our jurisprudence, the same is a part of the jurisprudence in all the countries which are governed by rule of law with an independent judiciary. In this connection, if we may quote what Lord Action said in one of his speeches:

“Everything secret degenerates, even the administration of justice; nothing is safe that does not show how it can bear discussion and publicity”

The aim and object of extensively quoting from the Hon’ble Supreme of India in the above paragraphs is to make public authorities, First Appellate Authorities and Public Information Officers defined in the State RTI Act, 2009 aware to appreciate the high value of utmost respect with which the highest court of the country has dealt with the Right to Information. Accordingly, the Commission appreciates that initially before the establishment of this Commission, most of the authorities dealing with this Act were lacking the awareness and familiarity with the transparency laws. It is expected that henceforth the awareness about the Constitutional value of the Right to Information will be duly appreciated to avoid the serious legal infirmities in their orders under sections 7 and 16.

It is not enough for PIO to deny information under section 8 (1) without assigning any reasons. He has to justify that the

information so sought and if disclosed, would "prejudicially effect the sovereignty and integrity of India, security strategy, scientific or economic interests of the State or lead to incitement of an offence. Onus is on the PIO to explain how such a disclosure of information as sought by the complainant will prejudicially affect the sovereignty and integrity of the country. The nature of information so sought by the complainant is being written about and discussed in print and electronic media over last several years. There have been Court proceedings on the trials and conviction/acquittal of the accused. Thus, this information is no more wrapped under cover. The PIO's attention is also invited to the provisions under section 8 (2) which provides

" that the information which cannot be denied to the parliament or in law State Legislation shall not be denied to any person"

These observations are not in any way to be construed a direction for disclosure. The only purpose of making these observations is to guide the PIO what are the circumstances under which section 8(1)(a) has to be invoked. Therefore, while passing the order he must keep the provisions of law in view. The Commission would also advise users of this Act to use this Act, in accordance with the procedure as laid down in this Act. The present complainant under section 16 of the State RTI Act, 2009 is provided

with a right to file a 1st appeal before the First Appellate Authority and in this case the 1st Appellate Authority was Inspector General (CID) of Police, J&K and after his first appeal has been disposed of and if appellant still feels, aggrieved with the order of FAA, he has to approach the Commission under section 16 (4) within 90 days from the date on which the decision has been made or was actually received with the State Information Commission. The mandate and jurisdiction of section (16) is wider and mandatory. The jurisdiction U/s 15 which the complainant has invoked is supervisory. Therefore, U/s 15 the Commission cannot direct PIO to provide information as sought by the appellant. The Commission can only investigate under what circumstances and reasons order was not passed, if it was passed late and if incorrect/incomplete, false information is provided then Commission can initiate penalty proceedings under section 17 of the State RTI Act, 2009. The Commission may similarly take other coercive action as provided under Law. Thus, in brief, under section 16 of the State RTI Act, 2009 filing of the 1st and 2nd appeal is prerequisite for obtaining information which has been denied by the PIO secondly under the State RTI Act, 2009, there is no concept of petition in the sense of making a request on compassionate basis. The State RTI Act, 2009 has conferred a right on the residents of the J&K State to seek and receive the information and this right has

been equated by the Hon'ble Apex Court of India to be a fundamental right in its decision in **Reliance Petrochemical Ltd. Proprietors of Indian Express Newspapers Bombay Pvt. Ltd. & others (1988) 4 SCC 592**. As no order has been passed by the designated PIO within prescribed time of 30 days, the PIO is required to explain why penalty under section 17 of the State RTI Act, 2009 may not be imposed upon him. Period of penalty will be reckoned from the date when the order was to be passed till date when the order is actually passed. His reply if any, must reach to this Commission within 30 days from the receipt of this order. The current PIO is directed to serve a copy of this order on his predecessor. He is therefore, directed to pass a speaking order.

The complaint is accordingly disposed of.

Notice of this decision be given free of cost to the parties.

Sd/-
(G.R. Sufi)

Chief Information Commissioner

Copy to :-

1. Inspector General of Police, CID J&K Jammu.
2. Public Information Officer /Sh. Bashir Ahmed Tamil (SSP) CID Head Quarters J&K Jammu.
3. Mohd Ahsan Untoo, Chairman International Forum for Justice / Human Rights Forum J&K

(M.S Shah)
Registrar
J&K State Information Commission